No. 340.
Brief of Perkins, Brown for

27709

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1900.

Filed Oct. No. 340, 1900.

JOHN H. GOETZE, doing business under the firm name and style of JOHN H. GOETZE & CO.,

Appellant,

vs.

THE UNITED STATES,

Appellee.

MOTION TO ADVANCE.

EDWARD C. PERKINS,
ALBERT COMSTOCK,
EVERIT BROWN,
Of Counsel with Appellant.

IN THE

Supreme Court of the United States,

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No. 340.

JOHN H. GOETZE, doing business under the firm name and style of JOHN H. GOETZE & Co.,
Appellant,

vs.

THE UNITED STATES,
Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Motion to Advance.

And now, on the 8th day of October, 1900, come Edward C. Perkins, Albert Comstock and Everit Brown, of counsel with the appellant above named, and move that the above-entitled cause be advanced upon the docket and set down for hearing upon such early day as shall be most convenient to the Court.

I.

This is an appeal (Record, p. 38), from a decision of the Circuit Court of the United States for the Southern District of New York (R., p. 35), affirming a decision of the Board of United States General Appraisers, overruling the appellant's protest and affirming the decision of the Collector of the Port of New York, which assessed a duty upon merchandise shipped from the Island of Porto Rico and brought into the Port of New York on June 6th, 1899 (Record, p. 6), after the exchange of ratifications of the Treaty of Paris.

The appellant claimed (1), that the goods in question were not liable to duty under the Tariff Act of 1897 (30 St. at L. 151), because they did not come within the category of "articles imported from foreign countries" (§ 1 of the act); and (2), that if by the terms of the Tariff Act they were dutiable, yet they were free of duty by virtue of the constitutional provision that "all duties, imposts and excises shall be uniform throughout the United States."

II.

As will appear more fully from the opinion of the learned Judge who sat in the court below (R., pp. 21–35), it was held that "Porto Rico was "a foreign country, in the sense that the con- "stitutional provision for uniform duties does not "apply to it" (R., p. 31), because under the Treaty of Paris, "the people of Porto Rico, instead "of being incorporated into the Union by the "treaty, are left *in statu quo.* Nor has there been "any extension of our laws and institutions to the "island, but at least one of these acts, brought "about either by treaty or legislation, is necessary "before any change of status, *before any applica-* "*tion of the Constitution in Porto Rico*" (R., p.

26); and because "our Government" could and did "by treaty accept title and sovereignty over "territory and at the same time preserve its status "as a foreign country so far as its internal relation "to us is concerned" (R., p. 27).

The case involves a general consideration of the nature and extent of the *implied* sovereign powers conferred upon the Government by the Constitution and of the *express* powers conferred upon it for the government of the territory of the United States; a consideration of the restrictive effect upon such powers of the general *prohibitions* contained in the Constitution, and a review of the many adjudged cases bearing upon the subject, such as *Reynolds* v. *U. S.*, 98 U. S., 162; *Springville* v. *Thomas*, 166 U. S., 707; *Thompson* v. *Utah*, 170 U. S., 343; *Callan* v. *Wilson*, 127 U. S., 540; *Baumann* v. *Ross*, 167 U. S., 548, and *Capital Traction Co.* v. *Hof*, 174 U. S., 1. It will also be necessary to consider the nature of the relations created by a cession of territory to the United States, and the cases relating to that question, such as *Am. Ins. Co.* v. *Canter*, 1 Peters, 541; *Fleming* v. *Page*, 9 How., 603, and *Cross* v. *Harrison*, 16 How., 164; the scope and effect of the uniformity clause in the Constitution, and its interpretation by this Court in *Loughborough* v. *Blake*, 5 Wheat., 317; the proper interpretation of the clause in the Treaty of Paris conferring on Congress the right to determine upon the "civil rights and political status" of the inhabitants of the ceded territories; and the question whether this clause can be considered as a contract obligation on the part of the United States towards Spain, and, if so, whether it is not repugnant to the Constitution.

III.

The construction and application of the Constitu-

tion and the validity and the construction of the Treaty of Paris being involved and drawn into question in this case, this appeal was taken direct to this Court, pursuant to Section 5 of the Act of March 3, 1891, and it was certified to and allowed pursuant to Section 15 of the Act of June 10, 1890 (R., p. 39).

IV.

Duties are now exacted upon goods brought from Porto Rico to ports elsewhere in the United States, under the Act of Congress of April 12, 1900.

This appellant is one of the many merchants by whom such payments have been, and constantly are being, made under protest. The legality of such exaction depends upon the constitutional questions which are involved upon this appeal.

The duties, paid under protest, upon goods brought from Porto Rico since the Treaty of Paris took effect, already amount to many hundreds of thousands of dollars.

V.

The accumulation of protests awaiting a final decision, by this Court, of the questions involved in this case, is the cause of great and increasing embarrassment to the Board of General Appraisers, and to merchants trading with Porto Rico.

The questions involved are of the highest degree of importance to the trade and commerce of the country, and to the public interests in general.

The policy of advancing causes of this nature, the decision of which will settle the law in a whole class of cases constantly increasing in number, has been repeatedly recognized by this Court, and is expressly sanctioned by the provision in the Act of June 10, 1890, Sec. 15 (26 Stat. at L, 131), that the Supreme Court "shall give priority to such cases."

We therefore submit that this case is pre-eminently one which presents those special and peculiar circumstances that call for argument and determination at an early date.

We are authorized to state that the Attorney-General, on behalf of the Government, joins in this application.

Dated, Washington, Oct. 8, 1900.

EDWARD C. PERKINS,
ALBERT COMSTOCK,
EVERIT BROWN,
Of Counsel with Appellant.